

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Michael Bell *et al.*
Ser. No. : 09/937,542
Filing Date : September 26, 2001
For : SCAPEL ASSEMBLY
Examiner : Victor X. Nguyen
Art Unit : 3731
Atty. Docket : 40198/324831 (CAN100)

Mail Stop: Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

COMMUNICATION REGARDING PATENT TERM ADJUSTMENT (PTA)
INDICATED IN THE NOTICE OF ALLOWANCE

Sir:

1. A Notice of Allowance was mailed on October 19, 2009 for the present application. One of the attachments to the Notice of Allowance was a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) that indicated that the total PTA to date is 0 days. The undersigned respectfully submits that the correct total PTA is 1691 days.

2. The determination of the total PTA of 0 days is erroneous first because the US Patent & Trademark Office (PTO) PTA calculator failed to account for four separate Patent Office Delays. Three PTO delay periods warrant a PTA credit of 1708 days for the PTO delay under 35 U.S.C. § 154(b)(1)(A) and 37 C.F.R. § 1.702(a)(1) ("A Delay"). The fourth PTO delay period warrants a PTA credit of 1171 days for the PTO delay under 35 U.S.C. § 154(b)(1)(B) and 37 C.F.R. § 1.702(b) ("B Delay").

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this submission is being filed via EFS
Web with the U.S. Patent and Trademark Office on January 19, 2010.

Lesley L. Andrew: /Lesley L. Andrew/

These four PTO delay periods should have their days added together in accordance with the reasoning in *Wyeth et al. v. Dudas*, No. 07-1492 (D.D.C. September 30, 2008). The first period of delay (“A Delay”) overlaps with the second period of delay (“B Delay”) by 905 days. Accordingly, a total PTA credit of 1974 days is appropriate based upon the PTO delay. The total number of PTA debits of 283 days for applicant delay is also not included in the Determination of Patent Term Adjustment. Thus, the correct total PTA to date is 1691 days (i.e. 1974 days – 283 days).

Thus, Applicants believe that the total PTA credit for PTO delay is 1974 days, the total PTA debit for applicant delay is 283 days, and the total PTA under 1.703 (f) is 1691 days.

3. In accordance with § 1.705(b), this application for patent term adjustment is filed no later than the payment of the issue fee but after the date of the mailing of allowance.

4. The following statements are required by 37 C.F.R. § 1.705(b)(2)(i).

- i) The correct total PTA credit is 2879 days without considering overlap.
- ii) The basis for the 1708 days PTA credit is under §§ 1.702(a)(1) and (a)(2) and is due to the PTO's failure to mail a notification under 35 U.S.C. § 132 or a notice of allowance within 14 months of the application's filing date and the PTO's failure to respond within 4 months after the filing of a reply under 35 U.S.C. § 132. The basis for the 1171 days is under § 1.702(b) and is due to the PTO's failure to issue a patent within three years of the filing date.

5. The following statements are required by 37 C.F.R. § 1.705(b)(2)(ii).

- i) The relevant dates as specified in § 1.703(a) for three parts of the PTA credit are as follows:
 - (a) The date of November 26, 2002, which is the date that is fourteen months after the date on which the application was

filed under 35 U.S.C. § 111(a); and the date of June 24, 2003, which is the mailing date of a notification under 35 U.S.C. § 132. Thus, this period of delay runs from November 26, 2002 to June 24, 2003. This period of delay is 210 days.

(b) The date of January 10, 2004, which is the date that is four months after the date on which the response after Non-Final Action was filed; and the date of March 20, 2007, which is the mailing date of a Final Rejection. Thus, this period of delay runs from January 10, 2004 to March 20, 2007. This period of delay is 1165 days.

(c) The date of April 11, 2008, which is the date that is four months after the date on which the Request for Continued Examination was filed; and the date of March 10, 2009, which is the mailing date of a Non-Final Rejection. Thus, this period of delay runs from April 11, 2008 to March 10, 2009. This period of delay is 333 days.

- ii) The relevant dates as specified in § 1.703(b) for the other part of the PTA credit are as follows: the date of September 26, 2004, which is three years after the date on which the application was filed under 35 U.S.C. 111(a) and the date of December 11, 2007, which is the date that a request for continued examination of the application under 35 U.S.C. § 132(b) was filed. Thus, the period of delay runs from September 26, 2004 to December 11, 2007, This period of delay is 1171 days.
- iii) The total PTA under § 1.703(f) is 1691 days, which is the total PTA credits for PTO delay (210 days + 1165 days + 333 days + 1171 days) less the overlap of 905 days for i(b) and ii less the total PTA debits for applicant delay of 283 days.

6. Any patent granted on this application is not subject to a terminal disclaimer. See 37 C.F.R. § 1.705(b)(2)(iii).

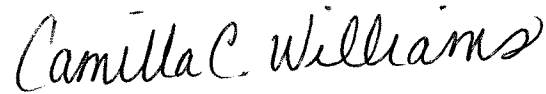
7. The following statements are required by 37 C.F.R. § 1.705(b)(2)(iv)(A):

- i) The Amendment after Final Rejection filed September 6, 2007 was filed after the three month period for filing a response. Under § 1.704(b), the period of adjustment for delay associated with this reply begins on the day after the date that is three months after the date of mailing of the Office Action on March 20, 2007 and ends on the date the reply was filed. Thus, the period of delay runs from June 20, 2007 to September 6, 2007. This period of delay is 78 days.
- ii) The Amendment after Final Rejection filed on September 6, 2007 did not include a Notice of Appeal and the patent application was deemed abandoned as of September 20, 2007. According to 37 CFR § 1.704(c)(3)(ii), abandonment of the application or results in a delay that is calculated from the date of abandonment to the date that is four months after the date the grantable petition to revive the application was filed (September 20, 2007 to February 11, 2008). Thus, this period of delay is 144 days.
- iii) The Response after Non-Final Action filed August 10, 2009 was filed after the three month period for filing a response. Under § 1.704(b), the period of adjustment for delay associated with this reply begins on the day after the date that is three months after the date of mailing of the Office Action on March 10, 2009 and ends on the date the reply was filed. Thus, the period of delay runs from June 10, 2009 to August 10, 2009. This period of delay is 61 days.

Thus, the total period of delay for applicant delay is 283 days (78 days + 144 days + 61 days).

The Commissioner is authorized to charge any necessary fees that may be due or credit any overpayment to Deposit Account No. 11-0855.

Respectfully submitted,

A handwritten signature in black ink that reads "Camilla C. Williams". The script is cursive and fluid.

Camilla C. Williams
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Encl.: Exhibit A - Copy of PTA History for Application No. 09/937,542 Printed from PAIR on January 13, 2010.

09/937,542

SCALPEL ASSEMBLY

01-13-
2010::09:57:19**Patent Term Extensions**

Patent Term Extension (PTE) for Application Number: 09/937,542

Explanation Of Calculations

Filing or 371(c) Date:	09-26-2001	USPTO Delay (PTO) Delay (days):	0
USPTO Adjustment (days):	+0	Corrections (APPL) Delay (days):	0
		Total PTE (days):	0

Patent Term Extension History

Date	Contents Description	PTO(Days)	APPL(Days)
10-19-2009	Mail Notice of Allowance		
10-19-2009	Document Verification		
10-19-2009	Notice of Allowance Data Verification Completed		
10-19-2009	Case Docketed to Examiner in GAU		
10-13-2009	Examiner's Amendment Communication		
10-01-2009	Examiner Interview Summary Record (PTOL - 413)		
07-31-2009	Information Disclosure Statement considered		
07-31-2009	Reference capture on IDS		
07-31-2009	Information Disclosure Statement (IDS) Filed		
09-08-2009	Date Forwarded to Examiner		
08-10-2009	Response after Non-Final Action		
08-10-2009	Request for Extension of Time - Granted		
08-18-2009	Case Docketed to Examiner in GAU		
07-31-2009	Information Disclosure Statement (IDS) Filed		
03-10-2009	Mail Non-Final Rejection		
03-09-2009	Non-Final Rejection		
03-09-2009	Mail Notice of Withdrawn Action		
03-09-2009	Date Forwarded to Examiner		
03-09-2009	Letter Withdrawing / Vacating Office Action		
01-06-2009	Miscellaneous Incoming Letter		
12-03-2008	Miscellaneous Incoming Letter		
12-18-2008	Mail Examiner Interview Summary (PTOL - 413)		
12-08-2008	Examiner Interview Summary Record (PTOL - 413)		
08-05-2008	Mail Non-Final Rejection		
08-01-2008	Non-Final Rejection		
07-01-2008	Mail-Petition to Revive Application - Granted		
07-01-2008	Petition to Revive Application - Granted		
12-17-2007	Date Forwarded to Examiner		
12-17-2007	Date Forwarded to Examiner		
12-11-2007	Request for Continued Examination (RCE)		
12-17-2007	Disposal for a RCE / CPA / R129		
12-11-2007	Workflow - Request for RCE - Begin		
10-11-2007	Petition Entered		
09-27-2007	Mail Advisory Action (PTOL - 303)		

09-25-2007	Advisory Action (PTOL-303)
09-10-2007	Date Forwarded to Examiner
09-06-2007	Amendment after Final Rejection
09-06-2007	Request for Extension of Time - Granted
03-20-2007	Mail Final Rejection (PTOL - 326)
03-19-2007	Final Rejection
03-12-2007	Date Forwarded to Examiner
02-21-2005	Response after Non-Final Action
11-17-2005	Mail Notice of Rescinded Abandonment
04-17-2006	Case Docketed to Examiner in GAU
11-30-2005	IFW TSS Processing by Tech Center Complete
11-17-2005	Notice of Rescinded Abandonment in TCs
11-17-2005	Mail-Petition to Revive Application - Granted
02-21-2005	Petition Entered
01-24-2005	Mail Abandonment for Failure to Respond to Office Action
01-21-2005	Aband. for Failure to Respond to O. A.
02-18-2004	Information Disclosure Statement (IDS) Filed
02-18-2004	Information Disclosure Statement (IDS) Filed
06-24-2003	Mail Notice of Restarted Response Period
06-16-2003	Letter Restarting Period for Response (i.e. Letter re: References)
03-10-2003	Mail Non-Final Rejection
03-06-2003	Non-Final Rejection
12-10-2002	Case Docketed to Examiner in GAU
01-18-2002	Case Docketed to Examiner in GAU
12-07-2001	Transfer Inquiry to GAU
12-03-2001	IFW Scan & PACR Auto Security Review
11-27-2001	Application Dispatched from OIPE
10-05-2001	Correspondence Address Change
09-26-2001	Initial Exam Team nn

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